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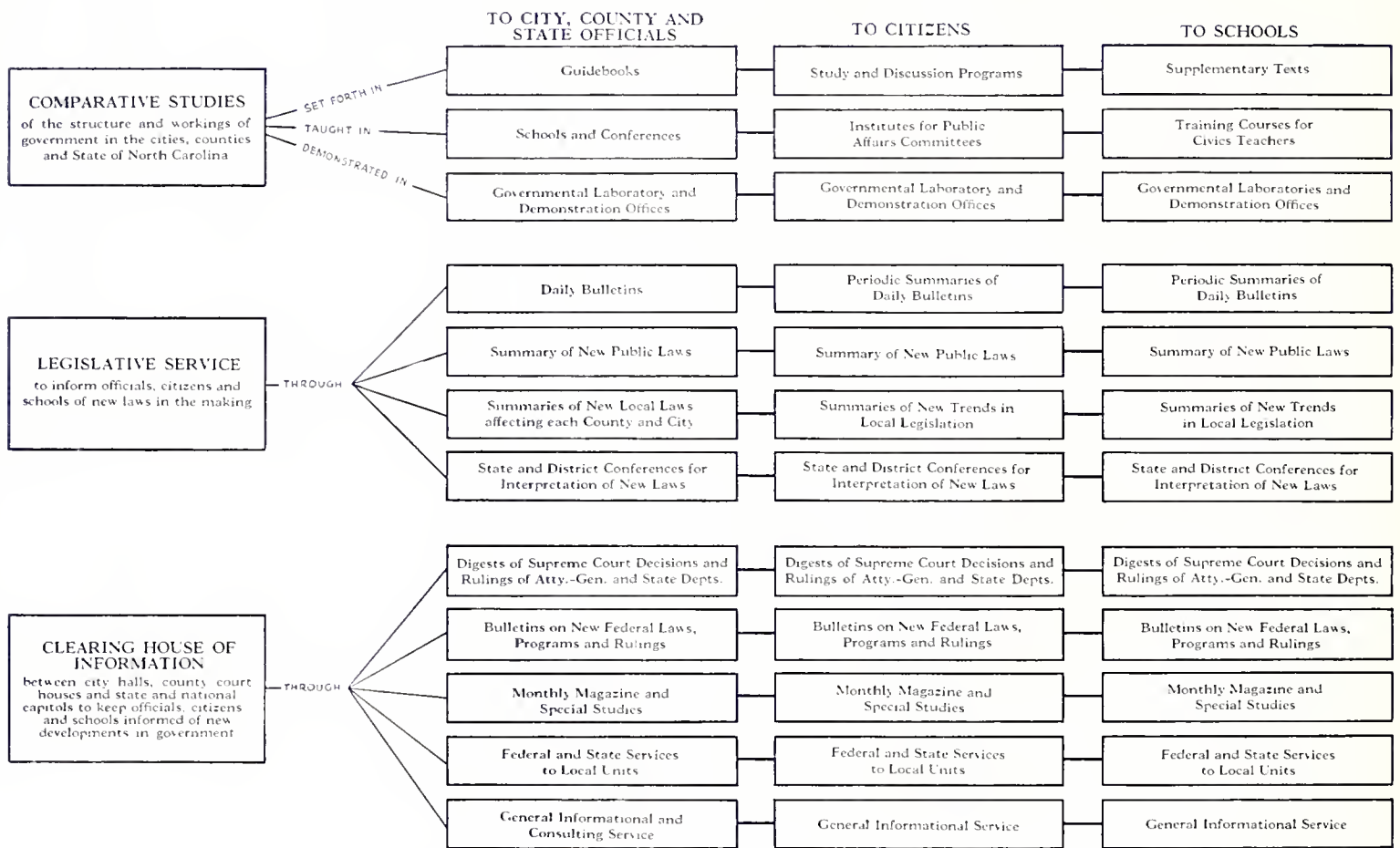
KEEPING UP WITH TWO CAPITOLS---
WASHINGTON AND RALEIGH

NEWS AND RULINGS OF INTEREST TO
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POPULAR GOVERNMENT

INSTITUTE OF GOVERNMENT SERVICES



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INSTITUTE OF GOVERNMENT

POPULAR GOVERNMENT

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JULY-AUGUST
1940

Budget Making Time Is Here Again

Multiplying Units and Expanding Functions Call for More and Larger Budgets --- Officials In 400 Local Units Busy Setting Expenditures and Estimating Revenues for 1940-41

THE story of government in North Carolina is a story of multiplying governmental units and expanding governmental functions. Multiplying units have called for more budgets and expanding functions have called for larger budgets. City, county and special district tax levies called for \$3,219,000 in 1901; \$8,233,000 in 1910; \$28,332,000 in 1921; \$65,911,000 in 1929; \$42,346,000 in 1938 — after the State had taken over the operation of schools, roads and some other local functions.

With the coming of every spring, officials in one hundred counties and around three hundred cities and towns in North Carolina begin to list the services their respective governmental units are expecting to perform in the coming fiscal year, compute the amounts to be spent

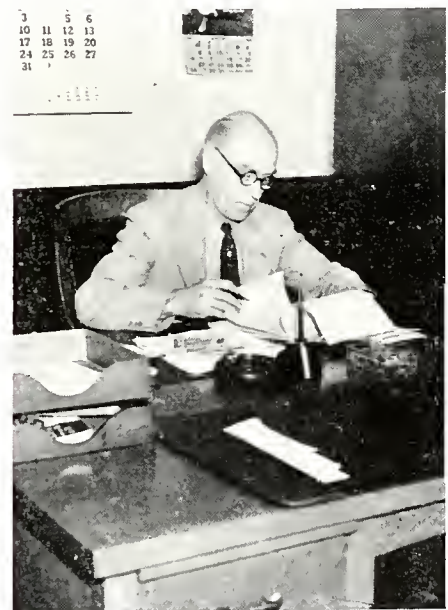
for each service, estimate the revenues needed to foot the bills, find the sources from which these revenues may come — in short, they start the annual process of budget making.

In April and May, city and county accountants prepare budget forms on which each department head is required to list (1) each object for which money will be spent, (2) the amount spent on it the preceding fiscal year, (3) the amount already spent in the current fiscal year plus the estimated expenditure for the remainder of the current fiscal year, (4) an estimate of the amount needed for the coming fiscal year.

In some cities and counties the accountant calls the department heads together, distributes the budget forms and outlines budget policies; in others he distributes them without conference to individual department heads; but in either case he usually confers with department heads separately while they are preparing their budget requests.

Here to the left the Durham City Manager and City Accountant, in the city manager's office, and, to the right the Durham County Manager in the county manager's office, are preparing to initiate the budget making process by calling on their respective department heads for estimates of their departmental expenditures for the fiscal year beginning July 1, 1940.

City and county department heads face a variety of problems as they begin performing their budget estimates. There are problems of salaries and personnel: shall salaries be raised or lowered? shall old men be fired or retired? shall new men be added to expand the staff? There are problems of equipment: shall old equipment be repaired or replaced with new equipment? shall old systems be discarded and new systems installed in order to bring old techniques and practices up to date? There are problems of expanding services: shall existing services be expanded or curtailed? shall new services be added or old services cut off? All of these questions must be met and solved by the department heads and boards, and the fates of departments rest on the answers to these questions.



Here in the center the head of the Durham Water Department and his chief assistant, and, to the right the Clerk of the Durham County Superior Court are filling out the budget forms they have received from the accountants of their respective units.

On or before the first of June the scene shifts back to the accountant's office with the returning budget forms carrying the budget estimates of all department heads. Here the accountant (1) examines the requests of each department, adds his own estimate of the amount needed—including any existing or expected deficit plus an amount not exceeding five per cent for possible emergencies, (2) estimates the revenues that may be expected during the coming fiscal year from taxation and from other sources, (3) and consolidates all of these departmental requests in a total budget estimate to be laid before the city or county governing board.

It is the duty of city councilmen and county commissioners to examine each item in the budget estimate of every department head. Many considerations press upon them as they begin this examination: What is the total valuation of real and personal property? Will the existing tax rate based on this valuation produce sufficient revenues? Shall the tax rate be increased or decreased? Are there new sources of revenue to be tapped? Have existing sources of revenue dwindled or disappeared?

Factors such as these are in the commissioners' minds as they decide whether departmental requests shall be raised, lowered or accepted as they stand, what must be done without delay and what may be deferred to later years. Further complications set in as pressure groups appear to insist that new services be added or old services expanded.

Are these services "special purposes" in the eyes of the law so that county commissioners may exceed the constitutional tax limit in order to add them to the county budget? If so, has "special permission" to exceed this constitutional tax limit for such service been given by the General Assembly under any of the existing laws, or must a special statute be enacted in order to make



an additional tax levy legal? Are they "necessary expenses" for which city councilmen or county commissioners may incur debt or levy taxes without a vote of the people? Are

they "public purposes" for which public money may be spent?

Twenty days before adopting the budget, the commissioners must file a copy with the clerk of the



Here above are the Durham City Manager and Durham city council members, and below the County Manager and Durham county commissioners discussing the budgets presented by their respective accountants and managers on or before the first Monday in July.





Here is a citizen examining the budget filed for public inspection.

board and furnish a copy to each newspaper in the county and publish it in at least one, so that any citizen may examine it and enter his protest to any item which he disapproves. Not later than the fourth Monday in July, the commissioners meet for the final adoption of the budget and to pass the appropriations resolution to finance city and county activities during the coming year.

Court House Chaff

Green and Red

A federal Congressman told this one: a negro parked in his Model T for 15 minutes at a newly installed traffic light and then went right through on the red light. He was arrested and taken before the Mayor. His plea: "I didn't mean no harm. I never seed one of them things before. I stood there for 15 minutes, and I seed all the white folks going through on the green light, so I figured naturally that the red must be for us niggers."

"Telling it To the Judge"

A man walked into a barber shop in Williamston and said, "Give me a quick shave, I have to be in court at ten o'clock."

"Don't worry about that," replied the barber. "If you are late, it won't make any difference because the judge is always late anyway."

"Yeah," the man said, "But I'm the judge—Judge Q. K. Nimocks."

The barber was so upset he only gave the judge seventy cents change for a five dollar bill, which didn't help an already embarrassing situation.

Tax for Necessary Expense Takes No Vote, But What Is Necessary?

FOR TWO hundred years of the state's history there was no constitutional limitation on the power of local governmental units to incur debt or levy taxes. In 1868 the Constitution provided that "no county, city, town or other municipal corporation shall contract any debt, pledge its faith or loan its credit, nor shall any tax be levied or collected by any officers of the same, except for the necessary expenses thereof, unless by a vote of the majority of the qualified voters therein." From 1868 to 1940 these local units of government have been asking the Supreme Court of North Carolina to tell them what is a necessary expense for which they may incur debt and levy taxes without a vote of the people.

Necessary Expenses Enumerated

In answer to this question the Supreme Court has classified the following as necessary expenses: (1) the ordinary expenses of government, including salaries and wages and office expense (decisions specifically mention salaries of mayor, treasurer, city attorney, janitor, county commissioners' pay, county attorney, sheriff's salary and expense of sheriff's office, register of deeds' salary and expense of office, Clerk Superior Court's salary and expense of office, county accountant's salary, police, jurors' fees, feeding and care of prisoners, tax listing expense, expense of holding elections, etc.); (2) the building and repair of municipal buildings such as city halls, county courthouses, guardhouses and jails, fire alarm systems, fire stations and sites therefor, police station, office rent for suitable headquarters, etc.; (3) the building and repair of public roads and streets and bridges; (4) building and repair of market houses; (5) the building and repair of county homes and the maintenance of the poor; (6) furnishing adequate water supply, including the digging of wells, contracting for water supply, building of water-works plants; (7) the building of sewerage systems; (8) the building of electric light plants; (9) performing autopsy, maintenance of the pub-

By
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lic peace and other phases of the administration of justice; (10) fire insurance for school buildings; (11) incinerators; (12) parks and playgrounds; (13) professional services in refunding bonds; (14) contract with hospital for care of indigent sick and afflicted poor; (15) jetties; (16) abattoir; (17) county farm agent's salary; (18) cemeteries. By way of dictum the court has classified the following as necessary expenses: (19) hay scales, (20) town clock.

Non-Necessary Expenses Enumerated

The Court has classified the following as non-necessary expenses within the meaning of Article VII, Section 7: (1) liquor dispensary, (2) county stock fence, (3) chamber of commerce, (4) wharves and docks, (5) cotton platform, (6) county and city hospital, (7) municipal airport, (8) city auditorium, (9) schools, (10) public library, (11) land and buildings for athletic and recreational purposes, (12) railroads, and (13) "fire drill tower." By way of dictum, the Court has classified an electric street car line as a non-necessary expense.

Since 1868, the Court has reversed itself twice, transferring water works and electric lights from the non-necessary to the necessary expense grouping. While it has never reversed its ruling that schools are not a necessary expense, it has reached a substantial equivalent through a belated construction of Article IX. But it has never withdrawn a func-

tion from the necessary expense grouping once the favored classification has been granted.

Courts and Commissioners

What are the relative functions of the Court and the local legislative bodies—county commissioners and city councilmen—in solving the problem of “necessary expenses”? In *Brodnax v. Groom* the Court stated the question as follows: “Who is to decide what are the necessary expenses of a County?” Six years later the dissenting opinion in *Wilson v. Charlotte* appears to assume that *Brodnax v. Groom* gave sole say to the commissioners and put no limits to necessary expenses except the commissioners’ will. But the majority opinion interpreted it to mean that the Courts are to decide *what are necessary expenses*, and the commissioners are to decide *whether those types of expenditures classed as necessary expenses by the court are in fact necessary in a particular time and place*. This interpretation has come to be the accepted interpretation of the relative functions of Court and Commissioners in subsequent decisions.

Tests and Standards

The Court has suggested many tests and standards to guide local units and officials in drawing the line between necessary and non-necessary expenses: whether it falls within the analogy of the law of necessities for infants; whether it is necessary to the existence of the unit; whether it is one of the unit’s ordinary expenses; whether it is incident to the purposes for which the unit was created; the size and circumstances of the unit; the cost of the undertaking; and at times it has resorted to the processes of induction, deduction, and analogy. There are decisions in which the majority opinion has relied on some of these tests to prove an undertaking is a necessary expense and the minority opinion has relied on the others to prove it is not, thereby demonstrating their interlocking, overlapping and conflicting characters.

Conflict and Confusion

The pressure on the Court to expand the concept of necessary expenses is as insistent today as ever.

The Court has overruled itself in the past, and expanded this concept to include electric lights and waterworks. The Court is divided on many questions of necessary expense which have come before it in recent years. Is it likely that dissenting opinions will ultimately prevail and expand the limits of “necessary expenses” to include expenditures now excluded by a majority of the Court: wharves and docks? airports? hospitals? In fact, how does the Court stand on hospitals as a necessary expense? In *Armstrong v. Commissioners of Gaston County*, the Court held that a tubercular hospital was not a necessary expense for the County; in *Nash v. Monroe*, the Court held that “a hospital for the sick and diseased and others requiring surgical and medical attention” was not a necessary expense for the city; in *Burleson v. Spruce Pine*, and in *Palmer v. Haywood County*, this conclusion was reiterated.

But in *Martin v. Commissioners of Wake County*, and in *Martin v. Raleigh*, the Court held that a thirty year contract with a hospital at \$10,000 a year to care for the “indigent sick and the afflicted poor” of Raleigh and Wake County was a necessary city and county expense. Chief Justice Stacy pointed out in a dissenting opinion that this decision could not rest on the authority of *Spitzer v. Commissioners*, for that was limited to the construction of a county home, and that it could not rest on Article XI, Section 7 of the Constitution for that limited the obligation to the care of “the poor, the unfortunate and orphan” while in this case the parties agreed that the contract would result in “modern hospitalization for the poor of Wake County and all of its citizens.” Has this dissent become the majority opinion in *Palmer v. Haywood County*, arising two years later, when a point was made of the fact that the annex to the county hospital was “*principally*,” but not exclusively for the indigent sick and the afflicted poor? Or is the case to be distinguished on the slender ground of legislative authorization suggested by the Court? Has the majority opinion in the *Palmer* case become the opinion of a unanimous court in *Sessions v. Columbus County*, arising one year later? Do the Raleigh

and Wake County cases mean that each of the near to half the counties in the state covered by the legislative enactment mentioned there can immediately follow suit? or that the remaining counties may through the device of added legislation be brought within the limits of necessary expense? If they may contract for hospital services, as a necessary expense, may not the time come when building their own hospitals will be considered a necessary expense? Such were the steps through which waterworks systems became a necessary expense. In applying the doctrine of the Raleigh and Wake County cases will the Court approve a contract for the medical care of “indigent sick and the afflicted poor” of all counties which now are or may be included in authorizing legislative enactments regardless of the size, population, wealth or other differentiating conditions? or will it follow the other view and inquire whether under the particular circumstances such a contract is a necessary expense?

Where Do We Go From Here

What of other enterprises seeking the preferred status and already as far as the Attorney General’s office? Such as beautifying streets? parking lots? swimming pools? community houses? Is it a necessary expense to build a road or street, widen it, grade it, pave it, patch it and not a necessary expense to beautify it? Is it a necessary expense to build roads and streets wide enough for cars to park near the curbing or on the shoulder without impeding traffic, and not a necessary expense to purchase land for parking lots accessible to but not adjacent to traveled thoroughfares? Is it a necessary expense to build parks and playgrounds for outdoor play and recreation and not a necessary expense to build a community house for indoor play and recreation? And what if the swimming pool, ruled not to be a necessary expense, is included among the facilities of the outdoor park and playground now held to be a necessary expense? Which tests or combination of tests to be found in the opinions of the Court are to be controlling in the future? The line, says the Court over and over again, must be drawn somewhere—but where?

General Tax Limited to 15c, but What about Special Purposes?

THE TOTAL of the State and county tax on property," says the constitution of North Carolina, "shall not exceed fifteen cents on the one hundred dollars value of property. . . . Provided further, the State tax shall not exceed five cents on the one hundred dollars value of property." A glance at the tax rate of New Hanover County as indicated in the accompanying chart, or of any average county in this state, will show, however, that the total tax rate almost always exceeds seventy-five cents on the \$100 value of property, and often goes as high as two dollars, with apparently no limitation in the offing. In view of the above constitutional provision, where do counties get the power to fix tax

New Services and Special Levies Stretch Limit Out of Shape—What Is Special Purpose Is Knotty Question for Officials and Citizens.

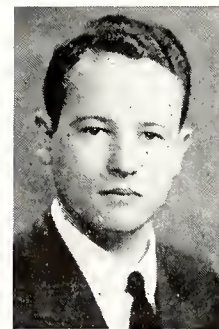
rates frequently at ten times fifteen cents? Does the constitution impose a limit at all? If so, to what extent, and how effective?

Three Reasons for Higher Rates

Counties are able to fix a higher rate for three reasons: (1) the State does not levy any property tax under this provision; (2) the 15c limit does not apply to taxes for school purposes; (3) the 15c limit does not apply to taxes for "special purposes."

By
WILLIAM S. MITCHELL

of the Staff
of the
Institute of
Government



State has left the whole of the 15c levy to the counties. In 1920 by shifting the sources from which it obtained revenue the State discontinued levying a property tax. Since that time it has levied no property tax at all, except for a special levy of 15c for schools during one biennium under authority of a proviso in the constitution excepting the public schools from the 15c limit.

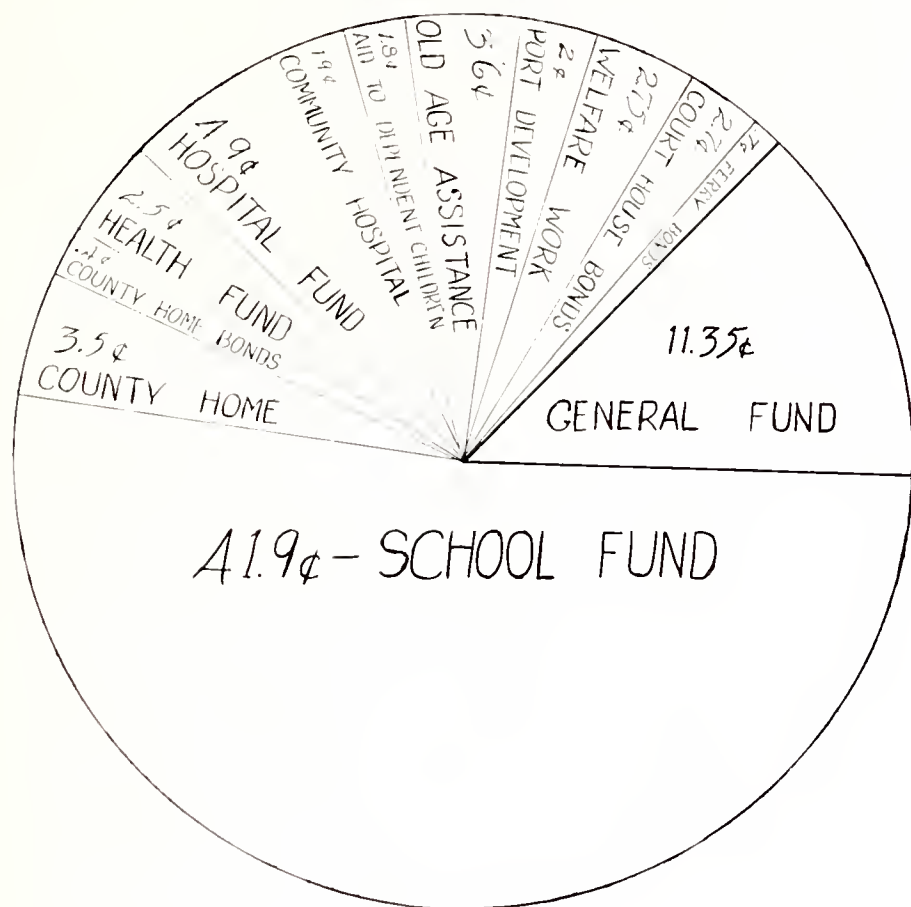
Exception as to schools applies to counties also. From the chart below, it may be seen that the county in question has levied for various school purposes a total of 41.9c on the \$100 of property, or over half the total county tax rate. Such a levy is permissible, however, for the exception as to the public schools applies as well to counties as to the State. As early as 1907, in the case of *Collie v. Commissioners*, our court excepted the public schools from the constitutional limitation to the extent of the constitutional term on the authority of Article IX, Section 3, and this preferred status was preserved in the constitutional amendment of 1920.

The constitution also allows the 15c limit to be exceeded "for a special purpose and with the special approval of the General Assembly, which may be done by general or special act." It is under this provision that county officials seek to find authority for the many special tax levies needed to support ever increasing demands for expanding services. Thus it is to be noted in the chart above that the county has special levies for the health fund, the hospital fund, the community hospital fund, for dependent children's assistance, old age assistance, port development, welfare department, county home bonds, county court-house bonds, and ferry bonds. Excluding schools, out of a levy of about 38c, all except 11.35c, or 26.75c,

General Fund, Schools and Special Purposes

Allocation of 1937 Tax in Typical County

(NEW HANOVER)



are for special purposes; only the 11.35c are levied under the 15c limit and may be used for any general county purpose without specific allocation.

What is a special purpose for which the counties may exceed the 15 cents tax limit? In answer to this question the Supreme Court has said the following were special purposes: building and repair of roads, bridges, and ferries; building, repair, and upkeep of courthouses, jails, county homes and farms and other county buildings; county aid and poor relief generally, and hospital care of indigent sick and afflicted poor; county health activities; pensions to widows of Confederate soldiers; farm agent's salary; county accountant's salary; and apparently "floating indebtedness incurred for necessary expenses."

Since 1868 the court has specifically held the following not to be special purposes: schools, "current operating expenses", and "floating indebtedness" incurred for "current operating expenses" or for "deficiencies in the general fund." The following particular expenditures have been held to be "current expenses" of a county and not "special purposes" for which the 15c limit might be exceeded, even though the special approval of the legislature was obtained: commissioner's pay, expense and board, "running the county courthouse", "care of courthouse grounds", county Attorney's fees, tax listing expense, expense of holding elections, expense of holding courts, and "caring for and feeding jail prisoners."

Guiding Considerations

"Current operating expenses" and "floating indebtedness." From the beginning, the court seems to have been consistent in its holdings that taxes levied for such blanket purposes as "to supplement the general fund", "meeting other current expenses", "to provide for any deficiency in the necessary county expenses", or "to meet current and necessary expenses" were not for "special purposes" within the meaning of Article V, Section 6, for which the 15c limit could be exceeded, even with special legislative approval. Yet when a county has first incurred

a "floating indebtedness" for any purpose, whether for current expenses or otherwise, and then seeks to levy a special tax in excess of the 15c limit to pay same, the court apparently assumes that such floating indebtedness was incurred for special purposes when there was no proof to that effect—only an absence of proof to the contrary. "The record does not disclose," said Justice Clarkson in *Commissioners v. Assell, Goetz & Moerlein, Inc.*, "that the \$50,000 indebtedness was for current or general county expenses. If it did the bonds to fund same would be invalid, as the levy for such purpose could not exceed, under the constitutional limitation, 15 cents. . . . The subject or subjects of the necessary expense or expenses for special county purposes are not set forth, and nothing else appearing, it is taken for granted that they were for one or more special necessary purposes and funding permissible under Constitution, Art. V, sec. 6, and the County Finance Act."

But "Is the county tax to be deemed levied for a special purpose where the debt to be funded *may have been incurred for ordinary current expenses?*" was the next question county officials asked. This seems to have been answered in part by the court in *Glenn v. Commissioners*. There the county commissioners, pursuant to the County Finance Act, sought to issue \$65,000 of county bonds, "for the purpose of funding . . . a like amount of indebtedness created by said county for its *current necessary expenses*" constituting a deficit in the "county operating expense fund." But the Court would not allow an unlimited tax to pay such bonds. "When a debt is originally created for a purpose properly denominated special, which is also a necessary expense of the county, its funding . . . may be declared a special purpose because of its initial character . . ." it said, "but when the debt arises from a deficiency in the general county fund, its funding . . . would not be 'for a special purpose' in the constitutional sense."

What is a "current operating expense"? While the court has been consistent in holding taxes levied for purposes included under such descriptive phrases as "current operating expenses", "deficiency in general

funds", "other current expenses", "to supplement the general fund", etc., not to be for a "special purpose" within the meaning of Article V, Section 6, it has not always seemed consistent in its view as to the specific items coming within the meaning of the term. To illustrate: In *Nantahala Power & Light Company v. Clay County*, the court indicated by way of dictum that the "expense of running" a courthouse and the "care of courthouse grounds" were general county expenses and not special purposes, yet it had previously held that the "upkeep of the courthouse and other county buildings" was a "special purpose." It may be, however, that while the court, in different decisions, has used similar terms, it has had in mind substantially different types of expenditures.

Expenses regularly recurring and necessary in the orderly operation of county government held to be "current expenses"—From the first case decided under the 1868 constitution to the last case decided under the 1920 amendment, the court has often said that certain things were or were not special purposes without saying why. The recent case of *Nantahala Power & Light Company v. Clay County* throws some light on the guiding considerations. In speaking of item 1, including: "County commissioners' pay, expense, and board, county courthouse and grounds, and county attorney's fees", the court said: ". . . all the expenses set forth therein are general. The board of county commissioners is the governing and tax levying authority. Its functions are general in every aspect, and the expenses of the board are constantly recurring. While the purchase of the courthouse may be special, the expense of running it after it is built is general. While the purchase of the courthouse grounds may be special, the care of the grounds is a general expense. Therefore, each of the purposes included in this item is a general expense and comes within the limitation of Article V, section 6, of the Constitution." The court continued: ". . . the listing of taxes, holding of elections and holding of courts are general expenses recurring regularly in the ordinary course of and as necessary steps in the orderly operation of

(Continued on page 11)



Keeping Up with Two Capitols



RALEIGH

The 1939 Legislature had to grapple with the ever-present question of diversion of highway funds, and left Raleigh with the problem no nearer solved than when it arrived. However, during the fifteen months following the departure of the members of the Legislature, Mr. and Mrs. Citizen and Businessman of North Carolina have solved the question of diversion merely by burying it under an avalanche of tax dollars and dimes.

The year 1940 sees North Carolina's tax revenues soar to an all time high of over \$76,000,000, representing over \$20.00 per year for every man, woman, and child in the state. For those who love figures comparative summaries are presented below.

As in previous years, gasoline, auto license, franchise, income, and sales taxes were the leaders. The largest increase was shown by income taxes with a gain of over \$2,200,000, and gasoline and sales taxes running place and show. The tobacco situation in Eastern Carolina and the general economic outlook for next year may appear blue to some, but at the present time North Carolina's financial position looks rosy.

NORTH CAROLINA STATE DEPARTMENT OF REVENUE

Comparative Gross Collections Twelve Months Ending
June 30, 1940

Classification	Fiscal Year Ending June 30, 1940	Fiscal Year Ending June 30, 1939
REVENUE DIVISION		
Inheritance Tax	\$ 966,684	\$ 833,771
Privilege Tax	2,995,779	2,750,935
Franchise Tax	8,103,744	7,962,260
Income Tax	12,007,106	9,782,313
Sales Tax	12,206,076	10,997,884
Beverage Tax	2,264,909	1,886,888
Gift Tax	53,863	57,917
Intangible Tax	1,532,892	1,061,300
Miscellaneous	15,998	3,067
Total	\$40,147,051	\$35,335,435

MOTOR VEHICLE DIVISION

License Tax	\$ 7,831,250	\$ 7,354,731
Title Fees	177,058	156,146
Bus & Franchise	688,638	501,260
Gasoline Tax	25,905,733	24,440,996
Inspection Fees	1,255,112	1,157,564
Total	\$35,857,791	\$33,610,697
Grand Total	\$76,004,842	\$68,946,132
Amount Increase		\$ 7,058,710
Percentage Increase		10.24%

WASHINGTON

Federal Aid to Highways

A bill has recently been passed by the House continuing the Federal Aid Highway program. It authorizes a total appropriation of \$178,500,000 to be spent on the Federal-aid highway system, secondary roads, grade crossing elimination work and special projects in our national parks. As in previous years the federal funds must be matched with State funds, except for grade crossings and national park projects. That part of the bill which would have allowed direct grants to cities for construction and maintenance of streets was not passed; instead, state control of such funds was continued, so all federal funds coming into the state still must be routed through the State Highway Department.

Rural Electrification

The State Rural Electrification Authority is engaged in promoting 3,000 miles of electric lines in North Carolina through Federal funds. These lines would serve almost half of the state's counties and would furnish 10,000 rural inhabitants. Eight of the fourteen projects await allocation of Federal funds only before construction of the lines is begun. Practically all the work on three of the other projects has been done, and they await the obtaining of Federal aid. The other projects are yet somewhat premature. Surveys have been made, but nothing definite and particular can be said about them as yet.

Aid to Tax Officials

According to the Washington Review, the Bureau of Internal Revenue has made a tabulation of post office addresses of all persons who filed federal income tax returns in 1939. From this report every town and city can ascertain the number of individuals within its limits who paid an income tax in 1939. This work has been published and made available to local officials, and should prove to be a valuable aid in the levy and collection of local taxes.

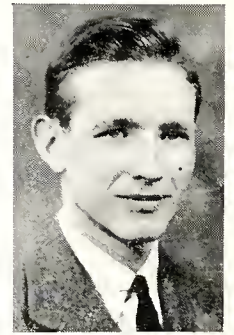
Housing Acts Upheld

In an almost unbroken chain of decisions representing adjudications from every section of the country, the courts of 23 states have now handed down decisions favorable to the housing and slum-clearance programs administered under the United States Housing Act and local housing statutes. Included among these states is North Carolina, our state statute having been upheld in both the case of *Wells v. Housing Authority*, 213 N. C. 744, and *Cox v. Kinston*, 217 N. C. 391.

Monthly Survey - - -

News and Developments from Here and There in the Major Governmental Fields

PHIL LUCAS
Staff Member
of the
Institute of
Government



Law Enforcement

Police Aided by Thumb-Prints of Pawnbrokers' Customers

Indianapolis has adopted an ordinance requiring pawnbrokers to thumb-print customers before loaning money on merchandise. The pawnbroker, after taking the prints, must turn them over to the police before noon on the day following the transactions. This ordinance has already led to many arrests and recoveries of stolen property.

The "Flying Sheriff"

Sheriff John Moore of Iredell County, North Carolina, has really "gone modern" with his method of law enforcement. Having been accustomed to flying for a number of years, he has successfully adopted the airplane to the business of hunting criminals. An airplane is especially useful in finding liquor stills, he has reported. "I could walk three or four days looking for a still and could find the same still in fifteen minutes with a plane," said Sheriff Moore.

Police Prevent Parking Pilferings

When the Cincinnati police see a parked automobile with exposed property inside they leave a card on the car which says, "It has come to our attention that you have unintentionally invited a theft from your auto. You have done this by leaving loose property exposed in your car. This is a very dangerous practice. . . . We have watched your property closely during your absence and we hope that we have protected and preserved it for you. However, it is our most fervent wish that you will not be negligent in this manner again . . ." The card signed by the chief of police and the patrolman, has been met with very favorable reception by the public.—*The Toledo City Journal*.

Taxation and Finance

41 Million Dollar Debt Reduction for State

According to Treasurer Charles M. Johnson during the decade ending July 1, North Carolina will have reduced its net state debt by \$41,537,214.04. Governor Hoey pointed out that the debt had come down during his term in spite of the fact that it has been a period of many permanent improvements and new buildings. Only seven other states have been able to reduce their net debt from 1933 through 1939. If the present retirement program is continued, North Carolina will be a debt-free state by 1953. This would be an accomplishment of which any state might well be proud.

Cows and Corporations

It is a truism that law on the statute books, as a practical thing, does not always find its way into execution in the hands of various officials. This was borne out recently when I talked with a county auditor of one of the larger rural counties in eastern North Carolina.

I first asked him what per cent of the taxes his county levied were actually collected each year. He said that corporations were very prompt in payment and that almost one hundred per cent of the taxes on corporate property was collected each year. But, on the other hand, he revealed that collections of the ordinary ad valorem levy on "Farmer Jones'" land barely exceeded fifty per cent. I then asked him what was done about this situation. "Don't you sell his property when a taxpayer fails to come across?" I inquired. He replied that in most cases that procedure was not always satisfactory. At that point my interest was aroused to a greater extent, for here was an indication that the law as written does not always meet with practical results when applied. "Let us take a

specific case," he began. "For example, John Jones is a farmer owning twenty acres of land, two mules and a cow. He fails to pay his taxes when they come due. If we take his cow and mules, he has nothing to work with. He must virtually give up, because he can no longer operate his farm. Taking a sufficient amount of his property to realize enough from its sale to pay his taxes would result in taking almost all of what little he has been able to accumulate. Then what happens? He and his family become a problem of relief and the county must provide for them, which in the end would cost the county more than it had realized from the sale of his property for failure to meet his tax bill. Further, if John Jones' cow is valued at seventy-five dollars, it might bring enough to pay for fifty dollars of his taxes. Thus, in taking his cow, the county is taking seventy-five dollars from him to account for fifty. Almost destitute in the beginning, this works an undue hardship on the farmer. And in this section a great majority of the taxpayers are farmers and a great majority of the farmers are in the same "fix" as John Jones.

Poll Taxes

"One of our greatest tax collection problems," the auditor continued, "is the poll tax. We have many men in our county, and especially young men, who never pay their poll taxes. Of course we have the legal power to garnishee their wages for the collection of this tax, or even attach their property. But it would cost, almost in every case, more than the tax amounts to itself to run down each person who failed to pay. Too, in a great number of cases, the taxpayer does not have any property in excess of the amount al-

lowed to be exempted from attachment. Thus with all these difficulties, we simply let much of the poll tax due the county go, for there is really no existing practical solution to the problem. However, I believe I know of a solution, at least as far as this county is concerned," the auditor said. "If we could get a bill through the Legislature requiring that every person subject to the poll tax levy present a receipt showing his poll tax paid as a prerequisite to the purchase of hunting or fishing license, I believe our poll tax problem would be greatly relieved. For in this county almost every male, by some means, manages to purchase one or both of these licenses."

As an example of what one state has done, Maine passed a law last year making it mandatory that a person of whom a poll tax is required produce a receipt for the same before a license to operate a motor vehicle can be obtained. A questionnaire concerning the effectiveness of the new law was mailed to tax collectors, with the following incomplete returns: Do you feel that the poll tax law has been a help to your town? Yes—195;

No—1. Would you favor a change in the present law relating to poll taxes? No—190; Yes—3. It was shown that the average increase of tax receipts was \$75. As far as the poll tax is concerned, North Carolina might profit by adopting a similar law.

Public Works

... And Not a Drop to Drink

The manager of the Lakeview, Oregon, water company is using an interesting way for encouraging the payment of delinquent water bills. Instead of turning off the water completely, the company attaches to the meter a device which slows the flow down to a mere trickle. After waiting ten minutes for a water glass to fill or four days to fill a bath tub, the tardy payers usually are eager to pay their back bills.

What Price Clean Streets?

According to a sampling survey of 26 cities made by a committee of the American Public Works Association,

American cities spent an average of \$437 a mile for street cleaning in 1939.

Among Public Improvements

Among public improvements going on in North Carolina are the following: Caldwell county is going ahead with two new PWA projects costing \$464,886. For the extension of the water system in and near Valmead, \$3,390 was allotted. Improvement of the county courthouse and grounds at Lenoir was authorized at a cost of \$5,122. Cleveland county received \$7,524 to improve school sanitary facilities. In Watauga county completion of the gymnasium at the Blowing Rock public school at a cost of \$2,335 was approved. In Shelby the city council voted to accept donations of two sites consisting of 60 acres as spots for municipal park and recreation centers. Work has begun on grading and scarifying the streets in Richmond Park. Street improvement work is going on in Belmont, made possible by the issuance of \$70,000 in bonds which supplement \$90,000 granted

Calendar for City and County Officials --- July 15-August 31

JULY

DAY	OFFICIAL	DUTY	REFERENCE TO LAW
15	County ABC Board.	Report and pay State tax on liquor sales for the month of June.	s. 519½, Ch. 158, P. L. 1939.
15	City Tax Collector.	Advertise for four weeks if certificates are to be sold in August.	s. 1715 (c), Ch. 310, P. L. 1939.
15	County Sheriff or Tax Collector, Governing Body.	Report sale and also regarding insolvents, to Governing Body, if sale held in July.	s. 1718, Ch. 310, P. L. 1939.
20	Tax Levying and Local School Authorities.	Report action on school budget from local funds to State School Commission.	s. 15, Ch. 358, P. L. 1939.
22	Governing Body.	Adopt and record appropriation resolution for ensuing fiscal year. File copies with Treasurer or Financial Agent and Accountant.	C. S. 1334, s. 59 and s. 60 and C. S. 2969-o.
22	City Tax Collector, Governing Body.	Report sale and also regarding insolvents, to Governing Body, if sale held in July.	s. 1718, Ch. 310, P. L. 1939.
31	Official Collecting Prepaid Taxes	1½% discount period for 1940 prepaid taxes ends today.	s. 1403 (b), Ch. 310, P. L. 1939.

AUGUST

Each regular meeting of Governing Body.	Sheriff or Tax Collector.	Report to Governing Body concerning taxes collected.	s. 1703, Ch. 310, P. L. 1939.
5	County Sheriff or Tax Collector.	Day for certificate sale if advertising done in July.	s. 1715 (b), Ch. 310, P. L. 1939.
5	Sheriff or Tax Collector, Governing Body, Accountant.	Day for complete settlement for all taxes if certificates sold in July.	s. 1718, Ch. 310, P. L. 1939.
5	County Sheriff or Tax Collector.	Advertise for four weeks if certificates are to be sold in September.	s. 1715 (c), Ch. 310, P. L. 1939.
10	Clerk of Superior Court.	Make monthly inheritance tax report to Commissioner of Revenue.	s. 20, Ch. 158, P. L. 1939.
12	City Tax Collector.	Day for certificate sale if advertising done in July.	s. 1715 (b), Ch. 310, P. L. 1939.
12	City Tax Collector.	Advertise for four weeks if certificates are to be sold in September.	s. 1715 (c), Ch. 310, P. L. 1939.
14	County Commissioners and County Accountants.	Annual meeting of State Association begins today.	C. S. 1308.
15	County ABC Board.	Report and pay State tax on liquor sales for the month of July.	s. 519½, Ch. 158, P. L. 1939.
19	County Sheriff or Tax Collector, Governing Body.	Report sale and also regarding insolvents, to Governing Body, if sale held in August.	s. 1718, Ch. 310, P. L. 1939.
21	County Commissioners and City Governing Body.	Levy such rates of tax as may be necessary.	s. 1400, Ch. 310, P. L. 1939 and C. S. 1334, s. 63 as amended by C. S. 2969-o.
26	City Tax Collector, Governing Body.	Report sale and also regarding insolvents, to Governing Body, if sale held in August.	s. 1718, Ch. 310, P. L. 1939.
31	Official Collecting Prepaid Taxes.	1½% discount period for 1940 prepaid taxes ends today.	s. 1403 (b), Ch. 310, P. L. 1939.

by the PWA. The state highway commission has contracted for two Iredell road projects costing \$84,131.

Health and Welfare

Bloody Legion Is Humanitarian

In the course of his work Police-man John Ruiz of New Orleans noticed the frequency with which he was called upon to broadcast calls to members of the department for volunteers in emergency blood transfusion cases. Realizing that the calls were becoming too numerous for the department to handle alone, he came upon the idea of the Blood Donor Roll and at his suggestion it was organized by the New Orleans police department. Volunteers are taken into the organization and their blood tested and typed. Then when a call for a blood transfusion comes the Blood Donor Roll is checked and a member with the requested type of blood is called.

Good Milk

Clinton, Fort Bragg, and Tarboro, North Carolina, are three of the sixteen cities in the country which have both 100% pasteurized milk, and a "compliance" rating of 90% or more with the grade A pasteurized milk requirements of the federal health service.

Winston-Salem Votes to Co-ordinate City and County Welfare Work

The board of aldermen of Winston-Salem recently unanimously voted to co-ordinate the city and county welfare activities beginning July 1, 1940. Plans had been discussed with authorized committees from the board of county commissioners, the Associated Charities and the Community Chest. Apparently cooperation from these groups is assured. A plan has been worked out for the transfer of cases and records which will prevent any lapse in handling of relief clients by reason of the transfer.

Surry County Gets X-Ray Machine

A new radiographic-fluoroscopic X-ray machine was purchased and installed in the health offices in the municipal building in Surry County this past month.

Millions Added to Tax Books Under New Ruling

AS A RESULT of the ruling laid down by the Supreme Court of North Carolina in the case of Odd Fellows v. Swain, 217 N. C. 632, many counties and cities are adding to their tax lists thousands of dollars of property which has previously gone tax-free. The Order of Odd Fellows in Raleigh owned a ten story office building, one floor of which was used for lodge purposes and the remainder leased as offices. All profits from the building were pledged to charitable and benevolent purposes. As a matter of fact, however, no profits had ever been realized from the building, and all income from rents had been used to pay on a large mortgage indebtedness. The Court held this property was not exempt from taxation under Section 600(7) of the Machinery Act.

Following this decision, the Attorney General in various opinions has ruled the following property taxable: (1) An entire building, two-thirds of which is rented for commercial purposes, though the remainder is used for lodge purposes; (2) a vacant lot located at a beach and owned by a fraternal order; (3) a house owned by a fra-

ternal order and leased to one of its members; (4) a piece of business property owned by a church and leased for commercial purposes. In the opinion of the Attorney General, however, the following property remains non-taxable: (1) Several small houses owned by churches and occupied by retired ministers, being exempt under section 600(3) of the Machinery Act; (2) a Y.M.C.A. which rents its rooms and bathing facilities only to members, and uses the funds therefrom to carry on other philanthropical purposes; (3) and other property owned and *occupied exclusively* by a charitable, education, benevolent, etc., institution, being exempt under section 600(6) of the Machinery Act.

The Attorney General has also ruled that under the Machinery Act, all of such property as is subject to taxation is liable for back taxes for five years in addition to the current year. While no discretionary power is given by law to the governing bodies to exempt such property from these back taxes, section 1109(4) of the Machinery Act empowers them to compromise and adjust for a lump sum the taxes for the previous five years, but not taxes for the current year.

Recent Supreme Court Cases

COUNTIES

Debt Reduction—Loans. The Watauga County Board of Education applied for a \$25,000 loan from the State Literary Fund for a new school building. When the notes were not submitted to the Local Government Commission for the certificate of its secretary until after the expiration of the fiscal year, it refused approval of the loan, the reduction of indebtedness of the county being sufficient to justify the loan only during the year the application was made. **Held**, the debt is valid, since the county accepted the offer before the end of the year during which the indebtedness was permissible. Though the certificate of the Secretary of the Local Government Commission is necessary, it is not required within any time limit. **Board of Education v. Board of Education**, 217 N. C. 90 (1940).

MUNICIPAL CORPORATIONS

Constitutional Law—Zoning. Winston-Salem passed a zoning ordinance including a provision separating residences of whites and negroes. Plaintiff brought this action to restrain the enforcement of the ordinance in so far as it inhibits occupancy of his property by negroes. **Held**, such ordinance is a violation of the Federal Constitution. Restrictions upon occupancy necessarily involve restrictions

upon the purchase and sale of property. **Clinard v. Winston-Salem**, 217 N. C. 119 (1940).

License Taxes—Wholesalers. Plaintiffs were wholesale merchants and sent salesmen into defendant town of Brevard to solicit orders for future delivery. Under an agreed statement of facts plaintiffs were not engaged in business in Brevard. Defendant city passed an ordinance imposing a privilege tax upon "wholesale dealers or merchants not otherwise taxed, using streets for delivery, per truck \$15.00". Plaintiffs brought this action to restrain the enforcement of this ordinance as to them. **Held**, ordinance invalid as to plaintiffs on the grounds of discrimination. It taxed business not carried on within the city. **Kenny Company v. Brevard**, 217 N. C. 269 (1940).

Public Offices—Power of Removal. The town of Canton appointed a tax collector for a term of two years, the Legislature having given the town such power of appointment with no term fixed. Before the term expired, the town appointed another tax collector without bringing any charges against the one appointed before. Plaintiff, new appointee, brought quo warranto action to try title to the office of the tax collector previously appointed. **Held**, where the term of a public officer

was not prescribed by law, the office was held during the pleasure of the authority making the appointment, and removal could be made without bringing any charges, even though appointment was made for a definite term, and such removal was made before the term expires. *Kinsland v. Mackey*, 217 N. C. 508 (1940).

Tort Liability. The City of Wilson had scraped a dirt street, and a manhole cover about two feet in circumference was allowed to remain in a depression five inches deep. Plaintiff's intestate, while driving a motorcycle about twenty-five miles an hour, struck the depression and as a result was fatally injured. Plaintiff brought this action alleging the city's negligence. *Held*, the city is liable on the grounds that it is the city's duty to use reasonable care in keeping the streets in a safe condition. Justice Barnhill, dissenting, contended that it was not the duty of the city to keep the streets safe for motorcycles, as long as they were safe for the ordinary modes of travel. Chief Justice Stacy, and Justice Winborne, concurred in the dissent. *Barnes v. Wilson*, 217 N. C. 190 (1940).

Parking Meters. Plaintiff contracted with the city of Raleigh for the sale and installation of coin-operated parking meters on certain down-town streets. Plaintiff ceased delivery and installation of the meters and sought a declaratory judgment to determine whether the city's parking meter ordinances were valid and whether the city had the power to contract for the purchase of the meters. *Held*, the ordinances and contracts were invalid because of lack of statutory authority "to impose a parking fee or charge for parking space." The court declared that there was no relation between the parking meter charge for parking and the regulation sought to be effected, i.e., parking an unreasonable length of time. Justice Devin dissented. The court refused to express an opinion as to whether statutes could be drafted which would be constitutional since the determination of such a question was unnecessary to de-

cide this case. *Rhodes v. City of Raleigh*, filed June 8, 1940.

TAXATION

Property Owned by Governmental Unit. The City of Winston-Salem purchased property at foreclosure sales to protect its tax and street assessment liens. The City did not use any of such property for public purposes. The improved property was rented, and the vacant property was not used for any purpose. All was held for favorable re-sale. Forsyth County levied taxes on this property. The city paid under protest and brought suit to recover the tax payments. *Held*, it was proper for the county to levy and collect the taxes on such property under the authority of *Benson v. Johnston County*, 209 N. C. 751, and *Warrenton v. Warren County*, 215 N. C. 342. *Winston-Salem v. Forsyth County*, 217 N. C. 704.

SPECIAL PURPOSES

(Continued from page 6)

county government. Caring for and feeding jail prisoners is a general expense continuous and ever present. Under the well established principles hereinbefore stated, these are not special purposes. Taxes therefor may be levied only within the constitutional limitation. There may be circumstances under which these items would be expenses for special purposes, but such circumstances do not arise in the present case." In these expressions, the court apparently thinks of *special purposes* as distinguished from *general purposes*, with the line of demarcation being whether the expenditures are "recurring regularly in the ordinary course of and as necessary steps in the orderly operation of county government."

Though regularly recurring, expenses in a "special field" may be for a "special purpose." But the court then holds that the levy for the county farm agent's salary is for a special purpose: "The character of the work is in a special field . . . we see no reason why it should not be classified as a special purpose." The court also holds the levy for the county accountant's salary to be for a special purpose: "The position and duties of county accountant were created under the County Fiscal Control Act . . . The declared purpose of this act is 'to provide a uniform system for all the counties of the State by which the fiscal affairs of the county and subdivisions thereof may be regulated . . . to the end that every county in the State may balance its

budget and carry out its function without incurring deficits.' The office of county accountant with prescribed duties was created with this special purpose in view. The duties of a county accountant constitute a 'governor' by which the speed of the spending motor of county government is regulated. The duties are special in character, and are in addition to the functions of other offices pertaining to the ordinary operation of county government." In these expressions the court apparently thinks of *special purposes* as "work in a special field", or as work with "a special purpose in view", and of functions of recent origin as compared to traditional county functions.

Many Questions Left Unanswered

This decision of the court is a distinct advance in this field in that it undertakes to formulate standards to guide officials in determining what is and what is not a "special purpose." It is breaking new ground; and the fact that the court leaves many questions unanswered does not mean that it does not answer the questions raised in the case before it. It adds to the list of things that are and are not special purposes; and its touchstones for the future are tentatives. To illustrate: "There may be circumstances," said the court, referring to items it held not to be for "a special purpose", "under which these items would be expenses for special purposes, but such circumstances do not arise in the present case."

What is the line of demarcation between the salaries of the farm agent and county accountant, and the salaries of other county officers? Are they not all alike "recurring regularly in the ordinary course of and as necessary steps in the orderly operation of county government"? Are they not all alike "work in a special field" and with "a special purpose in view"?

What if a county takes on a new function? Continues it from year to year? Expands it? Builds a building to house it? Adds to the building? If new functions, new buildings, new grounds are special purposes, but their regularly recurring maintenance falls within the 15c limit, may not a county by this process create a load too heavy to carry?



Raleigh Parking Meters Invalidated. During the few months of operation before our Court lopped off their heads, these meters collected a total of \$11,494, of which \$4,250 went to the company owning the machines.

Bulletin Service

Recent opinions and rulings of the Attorney General of
special interest to local officials



Prepared by

W. S. MITCHELL of the Staff of the Institute of Government

1. AD VALOREM TAXES.

A. Matters Relating to Tax Listing and Assessing.

4. Exemptions — property of Federal agencies and on Federal land.

To B. Lee Fentress. (A.G.) Real property acquired by the Home Owners Loan Corporation through foreclosure of mortgages is not exempt from ad valorem taxation.

9. Exemptions—property of N. C. rural rehabilitation corporation.

To W. E. Easterling. Inquiry: Are the properties of Penderlea Farm Homestead Association, Inc., to which a charter has been issued by the Secretary of State, subject to property taxation in Pender County?

(A.G.) Property belonging to such organizations are not exempt from ad valorem taxation. S. 600, c. 310, P. L. 1939.

25. Revaluations.

To Julian G. Dees. (A.G.) Valuations of property fixed by appraisers and approved by the County Board of Equalization and Review—except insofar as permitted by the Machinery Act—cannot be changed by the board of county commissioners several years after taxes have become due and payable on such appraised property.

29. Exemptions—\$300 personal property.

To K. R. Massey. Inquiry: Is the \$300 exemption on personal property mandatory, or may a town levy on the full amount?

(A.G.) The exemption is mandatory and must be allowed. S. 601(8), c. 310, P. L. 1939.

To Blan Blevins. (A.G.) Under s. 601(8), c. 310, P. L. 1939, a married man living in the same household with his father and dependent on him, would not be entitled to the \$300 personal property tax exemption. If such married man be not dependent upon his father in the sense that he is part of the father's household, the latter being the head of the family, I am of the opinion that he would be entitled to the \$300 exemption.

To Fred P. Parker, Jr. Inquiry: When a husband and wife live in the same household, one of them acting as the head of the household, would each be allowed a \$300 tax exemption?

(A.G.) They would be entitled to only one \$300 exemption for ad valorem tax purposes under sec. 610(8) of the 1939 Machinery Act.

To Mrs. Mary G. Burgin. (A.G.) If a non-resident is head of a household and maintains a summer home and lists property for taxation in a North Carolina county, such non-resident would be entitled to the \$300 exemption as set out in sec. 601 of the Machinery Act.

30. Situs of personal property.

To J. L. George. Inquiry: When a person has two homes, where is his residence for the purpose of collecting personal property tax?

(A.G.) The residence of such a person shall be the place at which he resided for the longest period of time during the year preceding the date as of which the property is assessed.

To W. R. Grant. Inquiry: When a fleet of trucks is operated under a firm name, and such firm name and the name of a particular town are painted on the trucks as a business address, and an office is maintained in connection with the operation of such trucks in said town, where should such trucks be listed for tangible personal property tax?

(A.G.) Under the circumstances described above the trucks should be listed in the town where the office is maintained.

40. Special assessments.

To Messrs. Harding and Lee. Inquiry: Where street pavement, under special assessment, is made several feet narrower in some blocks to prevent cutting of trees, should the assessment be the same per front foot throughout the entire project, or would the governing body have authority to make the assessments "based on the width of the pavement" as well as the front footage?

(A.G.) By statute, the front foot method of assessment has been adopted for North Carolina municipalities. But as special assessments are based upon the idea that assessments should be made according to the benefits accruing to the various property owners, I am of the opinion that the assessment, insofar as it relates to a particular block, should be governed by the width of pavement as well as the front footage.

110. Listing of personal property.

To John B. McMullan. Inquiry: Are slot machines duly licensed by state and municipal authorities susceptible to listing and taxation as other personal property?

(A.G.) Yes. This property is subject to listing and payment of ad valorem taxes as other personal property. I know of no reason why any distinction should be made with respect to it.

B. Matters Affecting Tax Collection.

16. Tax collection—corrections and discoveries.

To R. B. Mallard. Inquiry: Where a survey has been made of the city limits and it is found that certain real property which was heretofore thought to be situated outside the corporate limits is, in fact, within the limits, can this property be listed for the first five years as newly discovered property under the Machinery Act; and if so, is it mandatory that the Commissioners list it for the five years previous, or may they permit the owner to start listing it now and not charge him with any back taxes?

(A.G.) Under s. 1201, c. 310, P. L. 1939, cities and towns are permitted to obtain their tax lists from the county records, and if your towns have followed this pro-



ATTORNEY GENERAL
HARRY McMULLAN

cedure, the taxpayer is under no duty to list this property. Therefore, it cannot be considered newly discovered property to the extent that it could be placed on the books for the past five years and taxes collected thereon. Of course, it could be placed on the books for the current year.

23. Sale of real property.

To Fred P. Parker, Jr. Inquiry: In the sale of land for taxes, may the county allow a third party to bid the property in for less than the amount of the taxes due thereon?

(A.G.) In my opinion, the county is not required to bid in the property at the amount of taxes and costs due the county. It could permit a third person to buy the property at less than this amount, provided that such person is required to pay the fair value thereof.

To J. O. Tally. (A.G.) Reading all of the statutes together, I am of the opinion that it is mandatory on the county governing body to hold the sale of tax liens on property whenever the tax remains unpaid.

25. Delinquent taxes—distribution.

To Frank H. Gibbs. Inquiry: What is the proper distribution of the proceeds collected for delinquent school taxes?

(A.G.) Ordinarily, delinquent taxes should be distributed among funds in the same manner as current taxes. Where the county has advanced the Board of Education the amounts levied for school taxes from funds borrowed in anticipation of collection of school taxes, the proceeds of delinquent school taxes should be applied to any unpaid amounts borrowed for such purpose.

32. Tax foreclosure—liability of the former owner.

To Ralph Davis. Inquiry: Who is liable for the 1940 real property taxes on real property which is transferred in April, 1940?

(A.G.) Section 1401 of the 1939 Machinery Act provides that the lien on property or taxes shall attach as of the day the property is listed, regardless of the time at which the liability for the taxes

may arise. The lien, therefore, attaches on Jan. 1, 1940, the listing date. The matter as to which person is actually liable for the taxes, the buyer or the seller, is something to be worked out among themselves. No agreement having been made between them, the buyer would be forced to pay the taxes in order to prevent foreclosure and sale by the county.

35. Tax foreclosure—costs and fees.

To H. S. Swain. Inquiry: In the foreclosure of back taxes the law provides a \$2.50 attorney fee on each summons. In case a man owes five years back taxes would an attorney be entitled to a fee of \$2.50 for each year's tax when only one summons is served?

(A.G.) No. Only one fee may be charged. Under s. 1719 of the 1939 Machinery Act the bill of costs in a foreclosure suit may include one reasonable attorney's fee for the plaintiff not to exceed \$5. But the governing body of a unit may in its discretion allow a reasonable commission to its attorney on delinquent taxes collected by him. Or the governing body may arrange for the handling of tax suits on a salary or other reasonable basis.

40. Tax collection—special assessments.

To S. S. Farabow. (A.G.) Courts have consistently held that an assessment made upon adjoining land for street improvements by a town is a charge upon the land, constituting a lien superior to all others and not enforceable against the personalty or other lands of the owner, and when the owner of the land has been thus assessed, payable in installments, and he subsequently dies, such assessment is not a debt of the deceased payable by his personal representative, but a charge against the land itself and that the provisions of C. S. 93 as to the order of payment of debts of the deceased has no application. It would not be necessary, in my opinion, to have an administrator appointed in order to foreclose, under C. S. 7990, the assessment lien for street improvements.

To Charles E. Johnson. Inquiry: May a municipality proceed to foreclose under s. 7971(228) on a tax lien for special assessments, where no other taxes are owed?

(A.G.) Under s. 1719(i) of the 1939 Machinery Act a cause of action for the foreclosure of the lien of any special benefit assessment may be included in any complaint filed under this section.

49. Tax collection—prepayments.

To W. H. Lee. (A.G.) A tax collector would not be entitled to receive commis-

sions on prepaid taxes which are received by another official — as, for example, where prepaid taxes are paid to the auditor.

65. Tax collection—garnishment.

To Hon. P. S. Young. Inquiry: What printed form may a town use to garnishee wages for taxes?

(A.G.) The Machinery Act does not set out any form. However, C. S. 8004 prescribes the form to be used.

To W. G. McKeel. Inquiry: May a tax collector attach a W. P. A. check for unpaid taxes?

(A.G.) The salaries of Federal employees cannot be reached by garnishment for collection of taxes. The answer to the question here would depend on whether the workers were paid directly through federal relief agencies or not. In the case of P. W. A. projects, wages are paid by the contractors, and employees of such contractors are not federal employees.

72. Tax collection—levy on personal property.

To R. B. Mallard. Inquiry: Where "A" listed personal property in a North Carolina town for the years 1933 through 1937, and then moved out of the state, but frequently returns to the town in an automobile upon which a credit company holds a chattel mortgage, may the town tax collector levy on this automobile for taxes for the above years mentioned?

(A.G.) In my opinion he could; but the levy would be subject to the lien of the chattel mortgage holder unless a part of the taxes sought to be collected are due upon the automobile. See *American Agricultural Chemical Company v. Williamson*, 191 N. C. 404.

73. Tax collection—levy on personal property—after levy on real property.

To W. B. Matheny. (A.G.) Under sec. 1713 of the 1939 Machinery Act a tax collector is authorized to proceed against personal property in the manner therein provided at any time after taxes become due and before a tax foreclosure complaint is filed. Hence, even after real property is advertised, sold, and sale certificates issued, garnishment proceedings may be brought so long as foreclosure proceedings have not been commenced.

75. Tax collection—to what property lien attaches—

To J. H. Brett. Inquiry: May property which is acquired subsequently to the time taxes fall due on other property be levied on for taxes due on such other property?

(A.G.) Yes, but the tax lien would be subject to any other prior liens thereon.

77. Tax collection—priority of lien—

To J. H. Brett. Inquiry: Does a tax lien have priority (1) over an attachment of personal property by the taxpayer's employee for salary, (2) over a mortgagee's lien, (3) over a claim of purchase by a third party?

(A.G.) A tax lien has priority over an employee's attachment for salary or over a mortgagee's lien only to the extent that the tax lien covers taxes against the particular personal property that is levied on. A purchaser's title would be superior to the claim for taxes where there has been a bona fide sale.

85. Disposal of property purchased by taxing unit at foreclosure sale.

To E. H. Gibson. Inquiry: Can a county which has acquired title to land through

PERSONALTY OR REALTY?

To W. G. McKeel. Inquiry: May a tax collector levy on personal property where the taxpayer has realty?

(A.G.) Under s. 1713 of the 1939 Machinery Act a tax collector may proceed against personal property or real property in his discretion. He is required to proceed against personal property: (1) if directed by the governing body, or (2) upon demand of the taxpayer, mortgagee, or other person holding a lien upon the realty of the taxpayer; provided that such person making said demand shall furnish the collector with a memorandum describing the personal property and stating where it can be found. However, the tax lien continues against any realty of the taxpayer until the taxes have been paid.

a tax foreclosure suit dispose of it by private sale to relatives of delinquent taxpayer?

(A.G.) County Commissioners may dispose of county-owned property but no method is prescribed, C. S. 1297 (15). In the absence of fraud and collusion the county could probably convey good title by such a private sale.

To J. M. Baley, Jr. Inquiry: May proceeds from the resale of property purchased by a county at a tax foreclosure sale be credited to the general county fund?

(A.G.) It is true that the statute is silent as to the application of the proceeds; however, this office has formerly held that proceeds from the resale of the property, after foreclosure proceedings have been completed and the county has purchased such property, should be allocated, under the applicable MACHINERY ACT for the years that the tax became due, to the several funds interested therein. This would be true even though the property did not bring the full amount of the tax lien. In case the property brings more than the amount of taxes, plus cost, then I think the excess could probably be credited to the general county fund.

II. POLL TAXES AND DOG TAXES.

A. Levy.

1. Exemptions.

To Louis C. Allen. Inquiry: Is an alien exempt from poll tax?

(A.G.) The fact that a resident is unnaturalized would not exempt him from payment of the poll tax.

2. Exemptions—veterans—how obtained.

To H. B. Long. Inquiry: Are World War veterans exempt from the payment of the poll tax?

(A.G.) There is no such statutory exemption; however, county commissioners are authorized to exempt indigent persons.

B. Collection of Poll Taxes.

1. Penalties.

To Melvin R. Daniels. (A.G.) I know of no authority in North Carolina which would authorize criminal prosecution for failure to pay poll tax.

C. Poll and Dog Taxes.

1. Schools and poor.

To J. C. Ellis. (A.G.) It would not be

ABC'S AND TAXES

To John K. Taylor. Inquiry: May a town proceed against the stock of intoxicating liquors in the county A. B. C. store for the purpose of collecting the ad valorem tax thereon?

(A.G.) No, but this office sees no reason why the town could not levy on the funds on hand; also, any bank account of the A. B. C. store could be attached under s. 1713 (d), c. 310, P. L. 1939. It might be advisable to bring an action of mandamus to compel payment of the tax, since, conceivably, property belonging to a county agency might not be lawfully sold for taxes.

proper under s. 31, c. 358, P. L. 1939, for the county to deduct collection and disbursement fees from poll and dog taxes.

To A. C. Barnes. Inquiry: Can county commissioners charge against the school board's revenue from dog taxes, the cost of vaccinating dogs at the rate of 50c a dog?

(A.G.) C. S. 4895 (9) provides that collection of fee and costs by rabies inspector is not to exceed 50c for which credit is given on dog tax if certificate is presented to tax collector. County commissioners are not authorized to deduct any costs from taxes actually collected.

III. COUNTY AND CITY LICENSE OR PRIVILEGE TAXES.

A. Levy of Such Taxes.

2. Exemptions—veterans.

To Wm. D. Kizziah. Inquiry: May the county commissioners exempt a disabled world war veteran from license for selling horses and mules in that county? May exemptions be made for such veterans for other than peddler's licenses?

(A.G.) The exemption of world war veterans from the payment of the peddler's tax, levied in section 121 of the Revenue Act, does not apply to those persons engaged in the business of dealing in horses and mules. Horse and mule dealers are taxed under the provisions of section 115 of the Revenue Act and there are no exemptions contained therein which would have the effect of exempting world war veterans, or any other persons, from the liability for the tax imposed.

15. Privilege license on businesses, trades and professions.

To T. M. Thompson. Inquiry: Is a plumber who sells no materials, but only his labor, liable for the payment of a license tax?

(A.G.) Yes, under section 155 of the 1939 Revenue Act.

To W. R. Lovell. (A.G.) Under C. S. 2677, a municipality may lawfully impose a tax on the business of buying and selling leaf tobacco, and except from such tax the buying and selling of tobacco at auction on warehouse floors.

To W. E. Staut. Inquiry: Does a town have the power to pass an ordinance regulating and taxing the business of selling ice, even though such business is not taxed by the state?

(A.G.) I see no reason why the Town Commissioners could not levy a tax upon the business of selling ice. The fact that ice is not taxed by the state would not in itself have the effect of preventing a municipality from taxing the same.

To W. N. Rose. Inquiry: Would a town ordinance incorporating the following provision be valid: "Every person, firm or corporation, engaging in the business of selling and soliciting orders for and/or delivery of ice, within the corporate limits shall pay a tax of \$100 per annum. Provided, however, the provisions of this ordinance shall not apply to manufacturers or regularly licensed merchants who have otherwise paid the taxes due by them to operate the business in which they are regularly engaged."

(A.G.) In *Kenny Company v. Brevard*, 217 N. C. 269, our Court points out that while towns may levy license taxes upon trades, professions and businesses carried on within the town, the requirement of uniformity must be observed. On the principle of this, I am inclined to think the ordinance would not be sustained because it is in effect a discrimination against out-of-town merchants.

19. License tax on coal dealers.

To Ray Jennings. Inquiry: May a city impose a license tax on a power company distributing power within the city limits?

(A.G.) Under c. 158, s. 203, of P. L. 1939, cities and towns are not permitted to impose a license tax on public utilities in any amount greater than was heretofore imposed. Such provisions were contained in the 1937 and 1935 revenue act; therefore, if a city levied no license tax on power companies prior to 1935, it would be without authority to levy a license tax on a power company furnishing power in the city.

26. License tax—auction sales.

To Tom M. Hamer. Inquiry: Does North Carolina impose a State license for real estate auction sales? If so, is such license on a per sale or an annual basis?

(A.G.) Persons who engage in the business of conducting auction sales of real estate for profit are required by s. 111, c. 158, P. L. 1939, to apply for and obtain from the Commissioner of Revenue a statewide license, and shall pay for such license a tax of \$250. But if a person engages in such business in only one county, the license tax shall be only \$75.

Counties, cities and towns may levy a tax on such business not in excess of \$12.50 for each sale conducted therein; provided, that no county, city or town may levy a tax in excess of \$25 in any one year.

40. License tax on peddlers.

To the Commissioner of Revenue. Inquiry: Where a nursery hires agents to peddle its products, is it liable for (a) a state peddler tax, (b) city peddler tax and (c) county peddler tax?

(A.G.) Section 121, subsection (c) of the 1939 Revenue Act provides that "Nothing in this section shall apply to the sale of farm products raised on the premises owned or occupied by the person, or his bona fide agent selling the same." In my opinion nursery products would be farm products within the meaning of this section, and peddlers of products so grown would not be liable for any peddler's tax.

To James C. Stanton. (A.G.) Under Section 121, 1939 Revenue Act, a privilege tax can be levied on out-of-town trucks coming into town and retailing kerosene—not in excess of state tax on such peddlers. Any tax levied would have to apply equally to resident and non-resident peddlers. Otherwise, it would be void as discriminatory.

47. License tax on slot and vending machines.

To T. A. Burns. Inquiry: May a board of county commissioners legally instruct

the sheriff not to issue licenses for the operation of slot machines, pin ball tables, or other coin-operated devices?

(A.G.) No. The board has no authority to refuse to issue licenses for such machines which are neither unlawful nor gambling devices under s. 130 of the 1939 Revenue Act. The mere fact of having a state license, however, would not make a machine legal if it were in fact a gambling device.

55. License tax on building contractors.

To C. P. Covington. Inquiry: When an out-of-state plumbing contractor proposes to install plumbing in a U. S. building to be erected in a North Carolina town, would such contractor be liable for a li-

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cense tax under section 155 of the Revenue Act if the contract is let by the United States?

(A.G.) The United States has held that such tax would not be a burden on the Federal Government and hence can be collected.

To J. M. Stewart. (A.G.) Section 122 (a) of the 1939 Revenue Act relative to license tax on contractors and construction companies does not apply to firms bidding on a project, the cost of which is \$10,000 or less. If the cost of the project on which the company bids is in excess of \$10,000 it would be necessary to pay a license tax of \$100, which would constitute payment for an annual statewide license and it would not be necessary to pay \$100 on each bid.

To W. J. Mann. Inquiry: Where the owner is acting as superintendent of the construction of his own building, buying all the materials and paying for all labor, is he required to be licensed by the licensing board for contractors?

(A.G.) In my opinion such person would not be a contractor within the meaning of C. S. 5168 (cc), and thus would not be required to be licensed.

64. License tax on out-of-town business.

To M. E. Powell. (A.G.) Under the general authority of C. S. 2677 a town in which there was no dry cleaning plant or pressing club with a fixed place of business could tax the soliciting of that type of business within the town by persons from outside the town. Sec. 139 of the 1939 Revenue Act does not prohibit such taxation, but merely fails to grant such powers specifically. To hold otherwise would be to repeal part of C. S. 2677 by implication.

70. License tax on chain stores.

To A. J. Maxwell. (A.G.) An undertaker selling, or furnishing, coffins, shrouds, funeral clothing, and other like goods and maintaining two or more places of business would be liable for the chain stores' tax under Section 162 of the 1939 Revenue Act.

PEDDLER VS. ORDER TAKER

To E. O. Moore. (A.G.) A person going from place to place, exhibiting samples, taking orders, collecting his commission, with the orders being filled from out of the state, sent C.O.D., is not a "peddler" within the meaning of the license tax provisions of the Revenue Act. And even if such person were held to be a "peddler" the license tax provisions would not apply because of the interstate character of the business.

TAXING LAUNDRY TRUCKS

To H. I. Ward. Inquiry: May a town impose a license tax on the business of soliciting laundry in the town, where there is no established laundry therein?

(A.G.) Yes. Persons soliciting laundry in such a town are not required to pay a State license, but s. 150 provides that counties, cities and towns may levy a license tax not in excess of \$12.50 on persons engaged in laundry work therein when said work is to be performed outside the said town or county. This latter tax is not limited to towns in which there is an established laundry.

B. Collection of License Taxes.**1. Means of collection.**

To D. M. Morrow. Inquiry: Does a county tax collector have the legal authority to attach nickelodeons and pin tables for nonpayment of county privilege tax?

(A.G.) Yes. I am of the opinion that under s. 187, c. 158, P. L. 1939, a tax collector would have the power to levy upon any personal property owned by the person whose duty it was to pay the privilege tax.

IV. PUBLIC SCHOOLS.**A. Mechanics of Handling School Funds.****8. Revenue bonds.**

To Edward F. Taylor. (A.G.) A board of education cannot mortgage a lot in order to borrow funds with which to erect a teacherage. Under the municipal revenue bond act, however, a bond issue could be floated for that purpose.

B. Powers and Duties of Counties.**21. Erection of building — necessary expense.**

To Samuel R. Hoyle. Inquiry: Does the County Board of Education have authority to negotiate a loan with a Building and Loan Association for the purpose of erecting an addition to the teacherage of a school district, and secure said loan by executing a bond secured by a Deed of Trust upon the teacherage property, such loan being self-liquidating?

(A.G.) According to Denny v. Mecklenburg County, 211 N. C. 558, a teacherage does not constitute a necessary part of the equipment for schools, and the school districts having no specific or implied power to erect teacherages, such could not be done without a vote of the people. This office is thus of the opinion that the County Board of Education could not negotiate the loan.

30. Assumption of district debts by county.

To Clyde A. Erwin. Inquiry: The county, on Jan. 2, 1939, assumed the school indebtedness of the City Administrative Unit. Under a statute, for several years prior thereto, the county had levied a county-wide debt service tax, a part of which has been used to pay the debt service on the debt assumed. Consequently, the assumption of the debt by the county has not increased the county tax rate, but rather has decreased it. Under this situation did the assumption of the debt constitute an increase in county indebtedness within the meaning of art. V, s. 4 of the constitution so as to reduce the amount of net debt reduction for the year?

(A.G.) In my opinion, upon the line of reasoning found in Thompson v. Harnett County, 212 N. C. 214, our court would probably decide that the assumption of the school district debt did not create a new debt of the county, thereby reducing its borrowing power in the next fiscal year. I would not advise a loan to the county based upon this point, however, until it has been definitely settled by the court.

40. Use of county school funds — travel expense.

To Clyde A. Erwin. (A.G.) In my opinion, sec. 26 of 1939 School Machinery Act makes it mandatory that tax levying authorities make provisions in capital outlay budget for new busses needed to relieve overcrowding, upon a finding by the county board of education that the busses are overcrowded.

69. Districting attendance and assigning pupils.

To Clyde A. Erwin. Inquiry: Does the county board of education have the power to designate what particular schools the children of the district shall attend?

(A.G.) Under s. 5 of the 1939 School Machinery Act, the state school commission would be concerned with and would have final authority in the redistricting of students, and would have to be consulted as to any transportation problem which may become involved by reason of the relocation of schools.

F. School Officials.**12. Trustees of city administrative units — building contracts.**

To Clyde A. Erwin. (A.G.) Under C. S. 5468 the building and repairing of school buildings over which the county board of education has jurisdiction shall be by contract with the county board of education, but in special charter districts (city administrative units), the board of trustees of the district is required to exercise this authority. But the board of trustees of such district could authorize the county board of education to make the contracts, and after they are made, ratify and approve them.

49. Principals and teachers — authority and control.

To Clyde A. Erwin. Inquiry: Where special tuition is assessed by a high school for the privilege of taking a commercial course, may the superintendent of schools hold up a student's credits pending the payment of such tuition?

(A.G.) Art. IX of the North Carolina Constitution provides that the tuition in our system of public schools shall be free of charge to all children between the ages of 6 to 21. While the school authorities have authority to make reasonable charges for certain additional courses which are not usually provided in the state school set-up, in my opinion the local school authorities could not constitutionally withhold credit for a commercial course completed.

To T. R. Wall. Inquiry: Where a local school board has unanimously elected a principal and the county board fails to approve, what is the status of the principal?

(A.G.) If the county board fails to approve, the school board should proceed to elect another. The only time the county board elects a principal is when the school board can not agree.

To Hon. Claude L. Love. Inquiry: Is a teacher automatically re-employed if not notified prior to the close of the school term?

(A.G.) No. The only method by which a teacher can be elected is provided in s. 7 of the School Machinery Act. The provisions of s. 12 with regard to notification of rejection or re-election are, in my opinion, directory, not mandatory; but, of course, should be scrupulously observed by school authorities.

V. MATTERS AFFECTING COUNTY AND CITY FINANCE.**D. Sinking Funds.****5. Investment of sinking funds.**

To Thomas P. Print. Inquiry: Where a loan association has offered to pay the county 4% on sinking funds placed with them up to \$5,000.00, may the county commissioners so deposit such sinking funds?

(A.G.) In view of C. S. 2492(27), 2492(30), and 1334(70), I see no reason why this should not be done if the deposits in the Loan Association are secured by the Federal Deposit Insurance Corporation.

1. Issue of Bonds.**1. Bonded indebtedness — statutory limitation.**

To J. O. Tally. Inquiry: Which statutes would authorize boards of county commissioners and county boards of education to cooperate with the W. P. A. in erecting community buildings?

(A.G.) C. S. 2969(16)-(27), known as "The Revenue Bond Act of 1938", and C. S. 1334(1)-(44), known as the County Finance Act. Indebtedness, if any, would be created by the County Board of Commissioners and not the County Board of Education.

2. Debt limitation amendment.

To Claude F. Gaddy. (A.G.) The reduction of a school district debt—where such district debt is not a county debt—would not constitute a reduction of the county debt within the meaning of Article 5, Section 4 of the constitution relative to debt limitation.

To C. P. Hinshaw. Inquiry: A town has mistakenly collected \$8,000 as a special assessment. Would a bond issue for the purpose of refunding this amount constitute a debt increase within the meaning of art. V, s. 4 of the Constitution?

(A.G.) If these bonds would be for the purpose of funding or refunding a valid existing debt the constitutional limitation would not be applicable. Although there is no definite authority for the matter, I think that a good argument could be made that the money to be refunded to the property owners is a valid existing debt, and the issue of the bonds does not create any new obligation on the part of the town. Your authority for issuing the bonds would be found in C. S. 2715 providing for the adjustment of assessments, and under the Municipal Finance Act, art. XXVI.

3. Special district bonds.

To D. M. Stringfield. Inquiry: Is it within the power of Drainage District Commissioners to borrow money in its name, have the county commissioners levy a special tax in the district therefor, and assign such uncollected tax as collateral for the money borrowed?

(A.G.) I am of the opinion that C. S. 5337, which gives a drainage corporation such powers as usually appertain to municipal corporations, gives the drainage commission authority to legally borrow money for the necessary purpose of malarial control, and to issue a note therefor. Also the commission could assign on the debt the proceeds of taxes

levied by the county commissioners for the benefit of the district.

20. Submission to vote.

To Ben H. Neville. Inquiry: Could a town legally hold a bond election within three months after a bond issue for the same purpose was defeated at a prior bond election?

(A.G.) I have been unable to find any statute relating to municipal corporations which would prevent this practice.

35. Use of surplus funds after sale of bonds.

To H. L. Lyon, Jr. Inquiry: The sale of bonds to provide funds for a water and sewer system has resulted in a surplus. May such surplus be used to finance some other project such as the building of sidewalks?

(A.G.) No. In our opinion such use of the surplus would be prohibited under the Municipal Finance Act.

L. Local Budgets and Audits.

10. Approved by local government commission.

To W. C. Hinsdale. Inquiry: Is there any statute requiring counties or cities to have their books audited by different concerns periodically instead of following the practice of employing one concern indefinitely.

(A.G.) I am not aware of any such statute. However, some supervision over auditing the books of counties and cities is placed in the local Government Commission (Michie's Code, Secs. 1334(77)-1334(88)).

VI. MISCELLANEOUS MATTERS AFFECTING COUNTIES.

S. What Constitutes Necessary Expense.

4. Drainage district.

To Eric Norfleet. Inquiry: May a county borrow money to cover the preliminary expenses connected with the creation of a drainage district without a vote of the people under Art. VII, Sec. 7 of the Constitution?

(A.G.) A drainage district is not a necessary expense and in order to borrow money to be used for drainage district purposes under C. S. 278, Public Laws, 1937, and C. 279, Public Laws 1939, it would be necessary to comply with Art. VII, Sec. 7.

Z. Workmen's Compensation and County Employee's Funds.

15. Old age security and retirement funds.

To John C. Henry. Inquiry: Does North Carolina provide for a system of pensions for state and county employees?

(A.G.) C. S. 7534(9-18) provides for a Law Enforcement Officers' Benefit and Retirement Fund. C. S. 3212(1-18) authorizes counties, cities and towns to provide old age security for old and incapacitated government employees, and also provides for the creation of a retirement fund through the joint contribution of employees and employer.

20. Group insurances.

To J. O. Tally. (A.G.) In our opinion, the board of county commissioners does not have authority to take out group life insurance policies on the employees of the county.

2. Release from bond.

To R. P. Midgett. Inquiry: Does the board of county commissioners have authority to release and discharge the bond given by the Clerk of Superior Court when he took office, the bond to cover the term of his office? May the board refuse

to pay the premium but accept personal bond instead?

(A.G.) The county commissioners have no authority to do so, and the surety on the bond would remain liable during the term, despite any action the commissioners took. C. S. 326(a) authorizes the county commissioners to pay the premium on the bond given by the clerk.

5. Sureties.

To Harvey D. Hart. Inquiry: Does it violate C. S. 4390 when a salaried county official writes insurance or bonds on county officials where the county pays for premiums?

(A.G.) In view of C. S. 4388 et seq., such practice, in our opinion, should not be permitted.

SLUM CLEARANCE ACT

To R. A. Whitaker. Inquiry: C. 287, P. L. 1939, defines "municipality" as used in the act to mean any city having a population of 25,000 at the last federal census; the title of the act mentions cities and towns having a population of more than 5,000. May a city of 15,250 population take advantage of the act?

(A.G.) A city having a population of less than 25,000 could not take advantage of the act and pass an ordinance pursuant thereto relating to the repair, closing and demolition of dwellings unfit for human habitation.

VII. MISCELLANEOUS MATTERS AFFECTING CITIES.

F. Contractual Powers.

15. Requirement for competitive bids.

To Ben H. Neville. (A.G.) When a town proposes to enter a contract involving the expenditure of more than \$1,000, the town must first advertise for bids except in case of an emergency involving the health or safety of people or property as set out in C. S. 1316(a). The need for an additional water supply would not constitute an emergency within the meaning of the act when such need has gradually developed over a period of years.

J. What Constitutes a Necessary Expense.

7. City hall.

To H. L. Lyon, Jr. (A.G.) In our opinion, when a municipality has no municipal building and finds it necessary to rent space, the construction of a municipal building to house the fire and police departments, town government offices and town-owned machinery would be a 'necessary expense' within the meaning of Art. VII, Sec. 7 of the Constitution.

22. Sewerage system.

To P. V. Critcher. (A.G.) A bona fide improvement to a town sewerage system is a "necessary expense" within Article 7, Sec. 7, and money may be spent therefor without a vote of the people being required under that section.

To J. L. Wyatt. (A.G.) A sewerage system is a necessary expense within the meaning of the constitution and no vote of the people would be necessary under Article VII, Sec. 4.

28. Miscellaneous.

To Arthur A. Bunn. Inquiry: Can a city council appropriate \$500.00 to buy light fixtures for a high school baseball ground

where a small admission charge to pay for the fixtures is contemplated?

(A.G.) There seems to be no case decisive of this question, but see Atkins v. Durham, 210 N. C. 296, upholding the power of a city to provide parks and play grounds necessary to the maintenance of health.

K. Grants by Cities and Towns.

7. Advertising.

To Louis C. Allen. Inquiry: May a county appropriate funds to be used in advertising the advantages and resources of the county?

(A.G.) In the absence of a statute permitting such appropriations, a county would be without authority to do so.

12. Miscellaneous.

To Messrs. Hutchins and Parker. Inquiry: May a city contribute to a county expense in revaluation of the property for county Ad Valorem tax purposes?

(A.G.) In our opinion, this would not be proper inasmuch as the duty of revaluation is by statute placed on the county. The city might pay to the county a reasonable sum for the cost of securing a list of property within the city.

M. Sunday Closing Laws.

11. Sale of beer.

To C. C. Greene. Inquiry: Does a city have the authority to pass ordinances regulating Sunday hours of all kinds of businesses, particularly cafes and establishments selling beer and wines?

(A.G.) Yes. See State v. Medlin, 170 N. C. 682; State v. Ray, 131 N. C. 814; State v. Weddington, 188 N. C. 643.

T. City Health Matters Other Than School Health.

5. Safety and sanitary regulations.

To R. A. Whitaker. Inquiry: May a city of less than 25,000 population pass an ordinance making it unlawful for any person to own, rent or lease any building to be used as a dwelling which is declared unsafe or unsanitary by minimum standards of safety and sanitation specified in the ordinance, and requiring the demolition or improvement of such building.

(A.G.) Although the police power of a city is not static, it is not without limits. An ordinance such as you mention might tend to be arbitrary or confiscatory. It is an established principle that the constitutional guaranty of the right of property protects it from confiscation by legislative edicts. If the city is able to accomplish what it desires under the Federal Housing Authority Act, I would not advise the passage of the ordinance mentioned.

VIII. MATTERS AFFECTING PARTICULAR LOCAL OFFICIALS.

S. Mayors and Aldermen.

10. Vacancies—method for filling.

To George H. Adams. (A.G.) When a town alderman moves outside the town corporate limits and ceases to be a qualified voter of the town, a vacancy is created on the board of aldermen, and should be filled until the next municipal election by appointment by the board.

XI. GENERAL AND SPECIAL ELECTIONS.

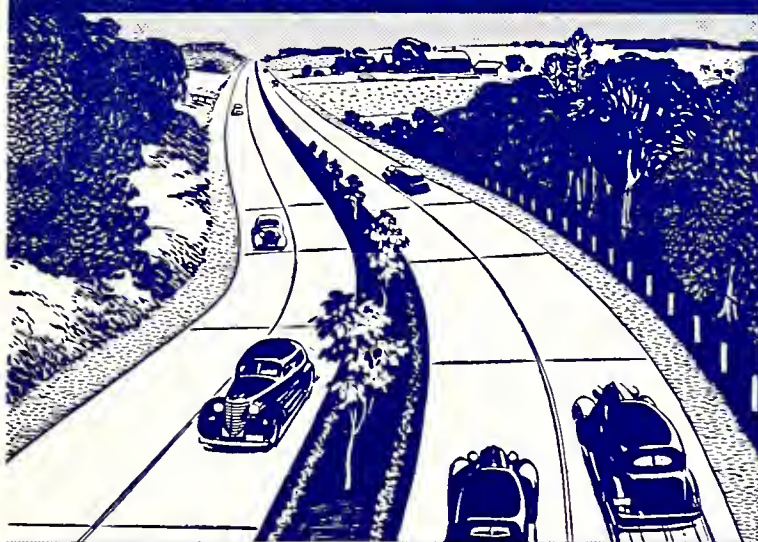
O. Liquor Control Elections.

20. Absentee voting.

To L. L. Levinson. Inquiry: May absentee ballots be used in a special liquor control election authorized by C. 49, P. L. 1937? (A.G.)

(A.G.) We think not.

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